

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

JOHNATHAN SPINKS

DEFENDANTS

FEDEX NATIONAL LTL

(b) County of Residence of First Listed Plaintiff ALAMEDA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DOROTHY D. GUILLORY, ATTORNEY AT LAW, CSBN 114891
1271 Washington Avenue, #380
San Leandro, CA 94577

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 ADA, ERISA, FMLA (42 USC 12101, 29 USC 1001, 29 USC 2654)

Brief description of cause:
 Failure to accommodate, retaliation, employment termination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ According to proof

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE
May 8, 2008

SIGNATURE OF ATTORNEY OF RECORD

Dorothy Guillory

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E-filing

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(5)
KS

Attorney for Plaintiff
~~REV. WILL HARDEMAN~~

Johnathan Spinks
Key

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

JOHNATHAN SPINKS,

Case No.

08-02404

TEH

Plaintiff,

v.

FEDEX NATIONAL LTL,

Defendant.

COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF, FOR VIOLATIONS OF THE
AMERICANS WITH DISABILITIES ACT,
ERISA, FMLA, FEHA, CALIFORNIA
LABOR CODE, WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

Plaintiff Johnathan Spinks alleges as follows:

PARTIES

1. Plaintiff Johnathan Spinks (hereafter "Spinks") is a 25-year-old male who resides in San Leandro, California, in the Northern District.

2. Defendant FEDEX National LTL ("FEDEX") is a commercial freight pickup and delivery company located and doing business in San Leandro, California, in the Northern District. At all times herein mentioned, FEDEX had in effect a benefits plan which included vacation, sick, personal and family and disability benefits.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter under the Americans With Disabilities
Compl., p. 1

1 Act ("ADA"), 42 U.S.C. section 12101 et seq., and 29 C.F.R., Part 1630 et seq; the Employee
2 Retirement and Income Security Act ("ERISA"), 29 USC section 1001 et seq.; the Family and
3 Medical Leave Act of 1993 ("FMLA"), 29 USC 2654, 29 CFR Part 825.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 4. Spinks worked for FEDEX's predecessor, Watkins Associated Industries, Inc.
6 ("Watkins") as a non-union Dock worker from approximately June 13, 2005, to June 1, 2006.
7 Spinks' duties were essentially unloading freight off of out-bound and in-bound FEDEX trucks
8 by hand and with a forklift.

9 5. Spinks worked approximately 32 hours per week for Watkins and was an hourly
10 employee. He performed his work satisfactorily and received pay increases from \$13.00 per
11 hour to \$15.00 per hour. Watkins offered and Spinks received medical, sick, vacation, dental
12 and disability leave benefits.

13 6. While working for Watkins, Spinks' superiors made sure that he received a ten
14 minute break in the morning, a 30-minute lunch, and a ten-minute break in the afternoon.

15 7. On or about June 1, 2006, FEDEX bought out Watkins, and retained Spinks as a
16 non-union employee. FEDEX offered and Spinks received medical, sick, vacation, personal and
17 family leave, dental and disability leave benefits.

18 8. Work conditions changed under FEDEX. Plaintiff's hourly rate was reduced from
19 \$15.00 per hour to approximately \$14.85 per hour. Corresponding with a reduction in Spinks'
20 pay was an increase in his workload. Plaintiff's supervisors required him to frequently work 14-
21 hour days, without breaks or lunch periods.

22 9. The increased workload resulted from an increase in truck driver's work. Many of
23 the truck drivers with Commercial Class C licenses previously working for Watkins quit when
24 FEDEX reduced their hourly pay and refused to pay them anything close to union scale. Instead
25 of replacing the truck drivers with qualified drivers with Class C commercial licenses, FEDEX
26 obtained contracted labor with Class B licenses. The contract workers refused to load their
27 trucks like the regular truck drivers, and their trucks were too small to handle the freight loads.

28 Compl., p. 2

1 Consequently FEDEX used Dock Workers, including Spinks, to work out of class and perform
2 the job duties and responsibilities previously performed by truck drivers. Under FEDEX, Spinks'
3 superiors frequently required him to work 14-hour days, performing out-of-class work, many
4 times with no lunch or other breaks.

5 10. A supervisor named Mago demanded long hours of Spinks, without
6 commensurate compensation or the breaks required by law. Mago's superior was the Dock
7 Supervisor, Cleo Jackson.

8 10. Because FEDEX was working Spinks so many hours without the required breaks,
9 he frequently became fatigued on the job, and was concerned about safety issues. Beginning in
10 about August, 2006, Spinks complained to his immediate supervisor, Mago, about having to
11 work the long hours without breaks. In retaliation against Spinks, Mago assigned him to paint
12 and clean up the facility, which was not part of Spinks duties and responsibilities, in addition to
13 performing the work of the truck drivers.

14 11. On one occasion on or about August, 2006, Spinks had worked about 14 hours,
15 and told Mago that he wanted to leave because he was tired. Mago got extremely angry and
16 retorted "You leave when I tell you to leave. When I ask you to do something, say 'Sir.'" In
17 light of Mago's response, Spinks had no choice but to continue to work more than 14 hours.
18 Spinks complained to Cleo Jackson about having to work long hours without breaks, and Mago's
19 attitude, without result. These working conditions continued up until October, 2006.

20 12. On or about October 29, 2006, after Spinks commented to Jackson and Mago
21 about the long hours without breaks, Jackson told Spinks he was suspended and ordered him to
22 to clock out and leave. Spinks asserts that he was told to leave in retaliation for commenting on
23 the work conditions. Spinks never received anything in writing concerning why he was
24 suspended.

25 13. From October 29, 2006, to November 11, 2006, Spinks called Mago and Jackson
26 every single work day, inquiring about when he would be called back to work, or when he might
27 have a hearing on his suspension. He received no response from either Jackson or Mago.

1 14. On November 11, 2006, Spinks was involved in a very serious motorcycle
2 accident which broke his hip, and resulted in a permanent condition affecting one of his hips and
3 legs. The condition affects his mobility, but he is able to work with some accommodation.

4 15. On very next day after this accident, Spinks' mother, Lorene Davis, notified
5 FEDEX that Spinks was hospitalized, and requested information concerning sick, personal,
6 family or disability leaves to which Spinks was entitled. Receiving no response from the
7 regional office, on November 19, 2006, Ms. Davis sent an e-mail to Tosha Owens in the National
8 FEDEX office, requesting on Spinks' behalf, sick, personal or vacation time or family leave for
9 him, and notifying FEDEX that she completed the disability claim paperwork. She received no
10 response from FEDEX. MSW Sharmila Grant at Highland Hospital also sent a letter to the
11 attention of Cleo Jackson at FEDEX, notifying him of Spinks' hospitalization, and inviting him
12 to contact her. Neither Jackson nor anyone at FEDEX ever contacted Ms. Grant.

13 16. On November 21, 2006, Jay Gallagher, the new terminal Manager for FEDEX
14 called Spinks and told him that he was terminated effective November 21, 2006, for not showing
15 up for work on October 30, 2006. This was false, as Spinks had repeatedly called in on October
16 30, 2006, asking Mago and Jackson when he was to report to work. Spinks asserts that he was
17 fired in retaliation for complaining about FEDEX's violation of labor laws, and so that FEDEX
18 could avoid having to accommodate Spink's disability, and so that FEDEX would not have to
19 give Spinks the benefits to which he was entitled under ERISA.

20 17. On November 28, 2006, Spinks sent a certified letter to Jay Gallagher, asking him
21 to state in writing why Spinks was terminated from his employment. Spinks received no
22 response to his letter.

23 17. Spinks has suffered loss of wages and the value of benefits, financial hardship,
24 severe and extreme emotional distress as a result of FEDEX' actions.

25 FIRST CAUSE OF ACTION
26 VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT,
27 and the FAIR EMPLOYMENT AND HOUSING ACT

28 18. Spinks incorporates by reference as though fully set forth the allegations of

1 paragraphs 1-17.

2 19. Spinks is an individual with a physical disability which limits one or more major
3 life activities, or is regarded as having an impairment which affects his walking, running, and
4 moving.

5 20. Spinks is a qualified employee with a disability who, with or without reasonable
6 accommodation, can perform the essential functions of the job in question if the existing
7 facilities are made readily accessible to and usable by him, through job restructuring, modifying
8 work schedules, reassignment to a vacant position, acquiring or modifying equipment or devices,
9 adjusting or modifying policies. This accommodation would not create an undue hardship for
10 FEDEX.

11 21. FEDEX denied Spinks reasonable accommodation, and retaliated against Spinks
12 by depriving him of the opportunity to request reasonable accommodation in violation of the
13 ADA and FEHA, causing damages to Spinks.

14 SECOND FEDERAL CAUSE OF ACTION

15 VIOLATION OF ERISA

16
17 22. Spinks incorporates by reference as though fully set forth the allegations
18 of paragraphs 1-17.

19 23. In engaging the conduct alleged in this complaint, FEDEX violated the provisions
20 of ERISA and Spinks was damaged thereby.

21 THIRD FEDERAL CAUSE OF ACTION

22 VIOLATION OF FMLA

23 24. Spinks incorporates by reference as though fully set forth the allegations
24 of paragraphs 1-17.

25
26 25. In engaging the conduct alleged in this complaint, FEDEX violated the provisions
27 of the FMLA and Spinks was damaged thereby.

FOURTH STATE CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE

26. Spinks incorporates by reference as though fully set forth the allegations of paragraphs 1-17.

27. In engaging the conduct alleged in this complaint, FEDEX maliciously and fraudulently violated the provisions of the California Labor Code wage and hour laws and Spinks was damaged thereby.

FIFTH STATE CAUSE OF ACTION
WRONGFUL DISCHARGE


28. Spinks incorporates by reference as though fully set forth the allegations of paragraphs 1-17.

29. In engaging the conduct alleged in this complaint, FEDEX wrongfully discharged Spinks with malicious and fraudulent intent, and Spinks was damaged thereby.

Wherefore, Spinks prays for:

1. Compensatory damages according to proof;
2. Statutory damages;
3. Punitive damages according to proof;
4. Statutory Attorney Fees and Costs;
5. Such other relief as the Court deems proper.

Dated: May 8, 2008


DOROTHY D. GUILLORY
Attorney for Plaintiff Johnathan Spinks